



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 14, 1948

Hon. R. Y. King
County Attorney
Donley County
Clarendon, Texas

Opinion No. V-545

Re: Abolishment of office of
County Superintendent in
Donley County.

Dear Sir:

We refer to your letter concerning the abolishment of the office of County School Superintendent of Donley County. You advise that about ten or twelve years ago the scholastic population of Donley County was 2,896; that under Article 2688, V. C. S., as amended by Acts 1932, 42nd Legislature, 3rd C. S., Chapter 21, then in force, the County voted to create the office of County School Superintendent, and that since that time there has been elected every four years a County Superintendent. That at present the population of Donley County is 1700, and the people are now anxious to abolish the office of County School Superintendent. You desire to know whether said office may now be abolished.

In Opinion No. 0-3839, wherein was submitted the question whether the office of County Superintendent in counties of more than 3,000 scholastic population may be abolished, this Department advised that since under the statute (Art. 2688, as amended by Acts 1932 above referred to) the Legislature has failed to devise any method by which either the people or the Commissioners' Court may abolish that office, and there being no constitutional delegation of such authority, it follows that neither the qualified voters nor the Commissioners' Courts have the power to abolish or discontinue that office once it has been legally established. See legislative history of Article 2688, as amended, and cases in support of this holding cited in attached Opinion No. 0-3839.

Since, as reported, there were only 2,890 (less than 3,000) in Donley County when the County voted for the office of County Superintendent, said office was created by an election held in accordance with that part of Article 2688, as amended by Acts 1932, which

reads:

" . . . In counties having less than three thousand (3,000) scholastic population whenever more than . . . twenty-five per cent (25%) of the qualified voters of said county as shown by the vote for Governor at the preceding General Election shall petition the Commissioners' Court thereof, said Court shall order an election for said county to determine whether or not the office of County Superintendent shall be created in said County; and, if a majority of . . . voters . . . shall vote for the creation of the office of County Superintendent . . . the Commissioners' Court . . . shall create the office of County Superintendent, and name a County Superintendent who shall qualify under this Chapter and hold such office until the next General Election . . . "

However, Article 2688, as amended by Acts 1932, made no provisions whatsoever authorizing the abolishment or discontinuance of the office of County Superintendent which was created in a county of less than 3,000 by an election held under that part of the Act quoted above. Unless Article 2688, as amended by Acts 1945, 49th Legislature, R. S., Chap. 208, provides for the abolishment of said office, it would follow that neither the qualified voters nor the Commissioners' Court would have the necessary authority to exercise the power of abolishment. Opinion No. 0-3839.

Article 2688, as amended by Acts 1945, 49th Legislature, contains this additional provision which does not appear in the statute as amended in 1932:

" . . . In all counties now or hereafter having the office of County Superintendent where the scholastic population according to the last scholastic census is less than three thousand (3,000) but more than two thousand (2,000) the office of County Superintendent shall continue unless and until a majority of the qualified taxpaying voters of said county, voting at an election held to determine whether said office shall be abolished, shall

vote to abolish said office, which election shall be ordered by the Commissioners' Court upon petition therefor as hereinafter specified. . ."

Under this quoted provision, all counties having the office of County Superintendent (whether said office was created by virtue of the fact that the county contained 3,000 or more scholastics and in accordance with the provisions set out in the first sentence of Article 2688, as amended, or whether it, having less than 3,000 scholastics, was created by an election held under that provision of Article 2688, above quoted) where the scholastic population is less than 3,000 but more than 2,000 has been granted the express power to abolish by an election the office of County Superintendent. Until such office is abolished in the manner set out therein it shall continue to exist. Prior to this amendment in 1945, the office of County Superintendent existing by virtue of a county having over 3,000 scholastics was terminated in a county when the scholastic population of such county fell below 3,000. See Opinion O-1254 for relevant discussion on this matter.

Donley County, however, does not fall within this provision of Article 2688, as amended 1945, last above quoted, because, as reported, its present scholastic population is about 1700, less than 2,000. Accordingly, it is our opinion, and for the reasons set out in Opinion O-3839, that there exists no present authority in the qualified voters or the Commissioners' Court of Donley County to abolish the office of County Superintendent existing in said county.

The general rule, supported by the weight of authority, is that where a county is empowered by the Legislature to create an office, it may, if unrestricted, abolish it. *Ford v. Board of State Harbor Com'rs.* (Cal. Sup. 1889) 22 Pac. 278; *Hartfield County* (W. Va. 1919) 92 S.W. 245; *Rivers v. Harley*, (Ga. Sup. 1945) 33 S.W.(2d) 310; and annotation 4 A.L.R. 224.

In this case, however, the legislative history of the Act calls for an exception to this rule. The legislative intent is of compelling importance inasmuch as the office is a creature of the Legislature. At one time the counties were expressly authorized to abolish the office in question. Acts 1889, 21st Leg., R.S., H.B. 452, p. 58; Acts 1905, 29th Leg., R.S., S.B. 218, p. 273;

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Stanfield v. State, 83 Tex. 317, 18 S.W. 577. However, these Acts were amended and the power to abolish the office was omitted, and thus withdrawn. We construe that action to mean that the Legislature intended that the county no longer has such power.

SUMMARY

Under the facts submitted, the office of County Superintendent existing as stated in Donley County may not be abolished or discontinued, there being no present statutory authorization for same. Article 2688, as amended by Acts 1945, 49th Legislature, R.S., Chap. 208; Attorney General Opinion No. 0-3839.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Chester E. Ollison*
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Assistant

CEO:mw
Encls.

APPROVED:

Hagan Dickson
FIRST ASSISTANT *HSD*
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